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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
) CC Docket No. 96-128
Implementation of the)
Pay Telephone Reclassification)
and Compensation Provisions of the)
Telecommunications Act of 1996)

**JOINT REPLY COMMENTS OF PEOPLES TELEPHONE
COMPANY, INC. AND COMMUNICATIONS CENTRAL INC.**

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Summary

A review of the comments demonstrates the undisputed fact that the D.C. Circuit endorsed the Commission's approach to rely on market forces to provide payphone service providers with fair compensation. None of the commenters challenge effectively the fundamental premise underlying the Commission's payphone compensation plan -- the use of a market-based approach to determine fair compensation for local coin calls and the default rate for access code and 800 subscriber calls ("dial around" calls). APCC noted that commissions, payments under 0- transfer tariffs and sent-paid toll surcharges, as well as the deregulated local coin rate, are valid proxies by which the Commission can base the dial around default compensation rate. The Commission, therefore, should affirm this market-based approach to fair compensation for dial around calls on remand.

Second, the record shows conclusively that any cost differences between local coin calls and dial around calls are minimal. To the extent that there are differences, the costs of dial around calls are expected to be greater than those of local coin calls. The interexchange carriers' models analyzing dial around call costs are not credible because they exclude a significant portion of joint and common costs of payphone operations that are attributable to all calls made from a payphone. As a result, the Commission has ample bases to continue the use of the local coin rate, or another similar proxy, as a default rate for dial around compensation, because the costs of dial around calls and local coin calls are similar.

Third, interim compensation is vitally important to independent PSPs such as Peoples and CCI. Three of the four publicly-traded PSPs submitted financial data indicating that without the interim compensation that Congress intended, they will not be viable entities. It is

simply unconscionable for the IXC's to question the wisdom of continuing with 'interim' measures at this time when they have paid nearly nothing to PSPs for originating dial around calls for over six years. If in the unlikely scenario the D.C. Circuit were to clarify that it vacated the Commission's interim compensation plan, the equities certainly require the Commission to ensure that its new plan provides fair compensation to PSPs, on a retroactive basis, at least to the point from which the Court vacated the interim compensation plan. And, if the Commission reactivates the former compensation plan (*i.e.*, the \$6.00 per payphone per month), the Commission is on firm ground to use the prior \$.40 per call rate, updated for the actual number of calls originated from a payphone as the basis for interim compensation.

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**JOINT REPLY COMMENTS OF PEOPLES TELEPHONE
COMPANY, INC. AND COMMUNICATIONS CENTRAL INC.**

Peoples Telephone Company, Inc. and Communications Central Inc. submit these joint reply comments in response to the comments filed pursuant to the Commission's Public Notice ("*Notice*") issued in response to the United States Court of Appeals for the District of Columbia Circuit remand of the *Payphone Orders*.¹

I. SUMMARY OF POSITION

None of the commenters challenge effectively the fundamental premise underlying the Commission's payphone compensation plan -- the use of a market-based approach to determine fair compensation for local coin calls and the default rate for dial around calls.² Indeed, the comments demonstrate the undisputed fact that the D.C. Circuit endorsed the

¹ *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Report and Order, 11 FCC Rcd 20541 (1996) ("*Order*"); Order on Reconsideration, 11 FCC Rcd 21233 (1996) ("*Reconsideration Order*", together "*Payphone Orders*"), remanded sub. nom., *Illinois Public Telecommunications Association v. FCC*, 117 F.3d 555 (D.C. Cir. 1997) ("*IPTA*").

² Throughout this discussion, both subscriber 800 calls and access code calls are included in the term "dial around calls."

Commission's approach to rely on market forces to provide payphone service providers with fair compensation. More specifically, the Court upheld the Commission's determination that a deregulated local coin rate would provide payphone service providers with fair compensation for local coin calls. As the RBOC/GTE/SNET Coalition (the "RBOC Coalition") pointed out, the D.C. Circuit affirmed the "bedrock principle" that the best way of ensuring that PSPs are fairly compensated is to let the competitive market set the price for each call.³ APCC noted that commissions, payments under 0- transfer tariffs and sent-paid toll surcharges, as well as the deregulated local coin rate, are valid proxies by which the Commission can base the dial around default compensation rate. The Commission, therefore, need not diverge from this market-based approach when determining fair compensation for dial around calls.

Second, the record shows conclusively that any cost differences between local coin calls and dial around calls are minimal. And, to the extent that there are differences, the costs of dial around calls are expected to be greater than those of local coin calls. The interexchange carriers have proffered models analyzing dial around call costs that simply are not credible because they exclude a significant portion of joint and common costs of payphone operations that are attributable to all calls made from a payphone. Indeed, the Commission has recognized that most of the costs related to payphone operations are fixed and thus are reasonably spread across all calls in determining the cost of a local coin and dial around call. As a result, the Commission has ample bases to continue the use of the local coin rate, or another

³ RBOC Coalition Comments at 12.

similar proxy, as a default rate for dial around compensation, because the costs of dial around calls and local coin calls are similar.

Third, interim compensation is vitally important to independent PSPs such as Peoples and CCI and to the survival of the independent PSP industry. It is simply unconscionable for the IXC's, such as Cable & Wireless, "to question the wisdom of continuing with 'interim' measures at this time" when they have not paid for the majority of dial around calls originating from independent payphones for over six years.⁴ The Commission was on solid legal ground to confirm that the IXC's' interim compensation payment obligations remain in effect while the Commission proceeds on remand. If the D.C. Circuit were to clarify that it, in fact, vacated the Commission's interim compensation plan, the equities would require the Commission to ensure that its new plan provides fair compensation to PSPs, on a retroactive basis, at least to the point from which the Court vacated the interim compensation plan. And, if the Commission reactivates the former compensation plan (*i.e.*, the \$6.00 per payphone per month), the Commission should use the prior \$.40 per call rate, at a minimum, updated for the actual call volume of 131 calls per month (or even 157 calls per month, which CCI demonstrated in its comments represents current call volumes⁵), for an interim compensation amount of \$52.40 to \$62.80 per payphone per month.

⁴ Cable & Wireless Comments at 4.

⁵ CCI Comments at 20.

II. THE RECORD SUPPORTS THE COMMISSION’S DETERMINATION THAT A MARKET-BASED APPROACH TO PROVIDING FAIR COMPENSATION WAS ENDORSED BY THE D.C. CIRCUIT.

The comments demonstrate the undisputed fact that the Court endorsed the Commission’s approach to rely on market forces to provide payphone service providers with fair compensation. As the APCC noted, the “Court specifically affirmed, over challenges of state commissions and interexchange carriers [sic], the Commission’s finding that the payphone marketplace is competitive and the Commission’s reliance on market forces to set the level of compensation for local coin calls.”⁶ The RBOC Coalition echoed the same theme: “Rejecting various challenges to the Commission’s decision to allow the market to set the rate for local coin calls, the Court concluded that the Commission’s ‘market-based approach’ would provide ‘fair’ rather than excess compensation for local coin calls. (citations omitted).”⁷

The Competitive Policy Institute’s bald assertion “that a competitive payphone market is nowhere in sight” is unsupported by the record in this proceeding and was specifically rejected by the Court’s decision in *IPTA*.⁸ Because TOCSIA required PSPs to unblock access code calls, consumers have a choice and can either dial around the payphone’s presubscribed operator services provider (such as the use of MCI’s successful dial around product, 1-800-COLLECT) or use a debit card to reach the carrier of their choice. The ability to dial around defeats any notion that a PSP is a monopoly provider of services. Thus, there is no support for

⁶ APCC Comments at 2.

⁷ RBOC Coalition Comments at 12.

⁸ Competitive Policy Institute Comments at 3; *IPTA* 117 F.3d at 562, 563.

MCI's assertion that PSPs have monopolies at each location and can, therefore, charge supra-competitive rates.⁹ Indeed, if this were the case, Peoples would not continue to pursue its strategy of charging AT&T rates for 0+ interstate calls from a majority of its payphones. Likewise, Peoples and CCI have contracted with various of the major LECs for the provision of intraLATA/local operator services at "dominant carrier" rate levels under this same pricing strategy.

Should there be any cases in which the payphone market does not become fully competitive, the Commission's plan provides a safety valve in which a state may demonstrate that there are market failures that would not allow market-based local coin call rates.¹⁰ And, with less than one month before states are required to deregulate the local coin rate, not one state has requested relief from the requirement or sought to show a "market failure" in the payphone sector. Accordingly, the Commission should retain its efficient, market-based approach to payphone compensation.

The IXCs' claims that the Commission must alter its market-based approach in favor of a strictly cost-based approach are unpersuasive. For example, AT&T claims that a cost-based approach is consistent with the Notice of Proposed Rulemaking and the Commission's previous payphone compensation orders.¹¹ AT&T fails to recognize that a market-based approach is also consistent with the NPRM and with the Commission's past compensation

⁹ MCI Comments at 3.

¹⁰ Order at ¶ 61.

¹¹ AT&T Comments at 2.

practices. As a result, AT&T's argument proves nothing. Indeed, the Commission's most recent access code call compensation amount of \$6.00 per payphone per month was based on a blend of market-based rates, rather than cost-based rates.¹²

Moreover, AT&T makes the incredulous argument that the Commission's dial around compensation would increase PSP revenues "at the expense of carriers and consumers."¹³ AT&T fails conveniently to mention that for over six years, it has had a virtual free ride on the backs of PSPs to originate millions of AT&T calls. Now that the Commission has eliminated this subsidy, it is not surprising that AT&T is crying foul. The equities, thus, support the Commission's actions, and AT&T provides no new persuasive justification for the Commission to abandon its market-based approach.

Likewise, Sprint's arguments fail to prove their hypothesis. Specifically, Sprint argues that historically, when the Commission has set rates in multi-provider markets, the Commission has promulgated rates that "should be set so as to permit the lowest-cost bellwether service provider an opportunity to earn a fair return, but should not be set so as to guarantee each and every service provider, or even the "industry average" service provider, a full return on investment."¹⁴ In the next breath, however, Sprint obviates the need for the Commission to

¹² See Second Report and Order, *Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation*, 7 FCC Rcd 3251, 3252-53 (1991) ("*Second Report and Order*"). Regardless of AT&T's argument, the Commission was not bound to adhere to existing mechanisms or procedures established for general regulatory purposes in other provisions of the Communications Act in crafting dial around compensation. H.R. Conf. Rep. No. 104-458, 104th Cong., 2d Sess. 158 (1996).

¹³ AT&T Comments at 7-8.

¹⁴ Sprint Comments at 6.

adopt this approach in cases where the market is competitive or policy changes have resulted in deregulation. And this is exactly the case in the payphone market. Not only has the Commission determined that the payphone marketplace is competitive, a conclusion the D.C. Circuit endorsed, but consistent with the 1996 Act, the Commission has largely deregulated the payphone market. As a result, Sprint's suggested "bellwether" cost-based approach is unwarranted by Sprint's own admission.

Because the IXC's do not present any persuasive justification to alter the market-based approach, the Commission should continue to rely on the marketplace to establish fair compensation for all calls provided from a payphone.¹⁵

III. THE IXCs' COST ANALYSES ARE FLAWED AND DO NOT PROVIDE FAIR COMPENSATION TO PSPs.

The Commission specifically asked in the *Notice* for comments on the cost differences, if any, between local coin calls and dial around calls. The underlying record, as supplemented on remand, shows plainly that there are few differences in the costs of local coin calls and dial around calls. As for costs solely attributable to local coin calls, APCC and the RBOC Coalition corroborated Peoples' and CCI's cost data in demonstrating that both local usage charges and coin collection costs are *de minimis*, amounting to \$.02-\$.03 per call.¹⁶

¹⁵ To simplify the approach, however, Peoples and CCI would be willing to consider support for the IXC's suggestion to tie dial around compensation to the prevalent national market-based deregulated local coin call rate starting in November, 1998 (year 3 of the Commission's plan), rather than tying it to the local coin rate at each individual payphone. MCI Comments at 5

¹⁶ APCC Comments at 12-13; RBOC Coalition Comments at 19.

Importantly, however, APCC and the RBOC Coalition demonstrated that, in the aggregate, the cost of a dial around call is expected to be greater than that of a local coin call. For example, APCC supported Peoples' and CCI's data that collection costs for per call dial around compensation are, or are expected to be, greater than coin collection costs. These dial around collection costs amount to \$.05-\$.06 per call.¹⁷

In addition, the RBOCs demonstrated that the expenses necessary to upgrade LEC switches and facilities to accommodate tracking of calls from payphones may amount to between \$.05-.08 per call.¹⁸ Because of this cost and related collection costs, the additional expense related to dial around calls, in most instances, are expected to be greater than those of a local coin call. Both CCI and Peoples have not included this new direct expense into their previously submitted cost data; if it were included, the cost of a CCI dial around call would increase to \$.39-.42 per call¹⁹ and Peoples' would increase to \$.43-.46 per dial around call.²⁰ Thus, there is ample support in the record for the Commission to adopt a dial around compensation rate of at least \$.35 per call, because even subtracting the 2 or 3 cents for local usage and collection costs, the

¹⁷ APCC Comments at 14-15. AT&T's own expenses in paying dial around compensation of \$.11 per payphone per month, AT&T Comments at 17, provide a rough check as to the reasonableness of the costs necessary to collect dial around compensation. That is, it is reasonable to assume that the costs necessary to pay dial around compensation are greater than those costs necessary to collect dial around compensation because although both payor and payee have to verify that each payphone eligible for compensation actually obtains compensation, the payor must expend funds to transfer the compensation amounts to the appropriate dial around compensation clearinghouse.

¹⁸ RBOC Coalition Comments at 17-19.

¹⁹ CCI Comments at 10 (base cost of a dial around call of \$.34).

²⁰ Peoples Comments at 14 (base cost of a dial around call of \$.38).

costs of a dial around call are comparable to that of a coin call, and certainly not one-third the cost as maintained by AT&T.²¹

Moreover, the IXC's analyses of dial around call costs are flawed because their analyses do not include the several joint and common costs that should be attributable to all calls made from a payphone. For example, the IXCs exclude commission payments from their analysis because, as AT&T explained, "the Commission would have to decide what constitutes a reasonable commission rate that would be recoverable by PSPs."²² Carrying this argument one step further, the Commission would have to determine the reasonableness of every other expense that PSPs incur to provide payphone service -- a wholly unrealistic and inappropriate proposition. Moreover, the market provides the necessary check on the reasonableness of commission payments. That is, location owners view payphone service as an adjunct service that they provide to their customers. It is counter to their fundamental business interests for them to demand high commission payments that require the PSP to increase its 0+ or other rates such that their customers do not use the payphone or have a bad experience with the payphone and, therefore, do not frequent the premises. Moreover, AT&T's asserts that "if PSPs were guaranteed recovery of their commission costs through the statutory compensation mechanism, there would be immediate pressure to include higher and higher commissions within the compensation system, which would in turn cause spiraling prices for consumers."²³ Not only is

²¹ Frontier Comments at 7; *IPTA*, 117 F.3d at 564.

²² AT&T Comments at 15.

²³ *Id.*; MCI Comments at 2.

this statement unsubstantiated, but it ignores reality because, as demonstrated above, Peoples is continuing to use AT&T as its predominant carrier and to price its 0+ calls (and other operator service calls) at dominant carrier levels based upon service quality considerations and brand recognition designed to obtain the volume of customers necessary to support the payphone.

Similarly, the IXC's do not provide any support for excluding other reasonably incurred costs. For example, Comptel asserts unpersuasively that "administrative or overhead costs are not properly attributable to coinless calls" without providing any justification as to why these costs are not attributable to all calls.²⁴ The payphone instrument is used to provide all types of calls, thus it is reasonable to ensure that each call bears its share of common corporate overhead and administrative costs.

In addition, even the fixed payphone costs that the IXC's provided in their comments ignore reality. The costs that AT&T cites for line charges, even without local usage charges, and maintenance and repairs are nearly one-half the magnitude of CCI's and Peoples' actual costs.²⁵ As a result of not including several cost categories and using unreasonably low amounts for certain cost categories, the analyses put forth by the IXC's are not credible and should be rejected.

Moreover, the IXC's' reliance on NYNEX's submission in Massachusetts that \$.17 per call less certain costs is the proper default compensation rate for dial around calls is

²⁴ Comptel Comments at 14.

²⁵ See e.g., AT&T Comments at 11 (average basic line charge is \$22.73); compared with CCI Comments at 9-10 (CCI's basic line charge of \$43.00 without local usage charges).

misplaced. First, NYNEX's costs may be representative of a LEC in the northeast, but are not representative of LEC costs nationwide or of independent PSP costs in any jurisdiction. As the LEC PSPs and independent PSPs demonstrated in Texas, proper costing of a local coin call would justify a \$.50 price for the local coin call.²⁶ Second, the IXCs themselves have complained to several state commissions that when the LECs have removed their payphones from regulated operations, they failed to remove all payphone subsidies from the rate base operations.²⁷ Thus, it is duplicitous for the IXCs to hold up the \$.17 per call rate as the starting point for dial around compensation at the Commission and, on the other hand, complain before state commissions that the LECs have not eliminated all of the subsidies from rate base, thus implying the \$.17 rate and other payphone rates are not reflective of true costs because they are still subsidized. The Commission should have little difficulty in ascertaining the transparency of this ruse, and should reject the IXCs use of NYNEX's cost data as a basis for a decision now.

IV. CONTINUATION OF INTERIM COMPENSATION IS VITAL TO CONTINUED VIABILITY OF INDEPENDENT PSPs.

PSPs unanimously supported the Commission's decision to continue to enforce payment of interim, flat rate dial around compensation until per call compensation is in place.²⁸ This compensation is essential to help address the severe financial constraints facing independent PSPs in light of "the growing number of dial-around calls" currently provided at

²⁶ See Attachment 1 for Southwestern Bell Telephone Company's comments before the Texas Public Utilities Commission justifying a \$.50 local coin call.

²⁷ See Attachment 2 for Bell Atlantic's Opposition to AT&T's Petition for Suspension of Bell Atlantic's payphone tariffs.

²⁸ See e.g., APCC Comments at 17.

Peoples', CCI's and other PSPs' payphones. Peoples has not had a profitable quarter since the first quarter of 1994 and since January 1995, CCI has shown a profit from its payphone division in only one quarter absent any dial around contribution. Therefore, Sprint's assertion that PSPs' existing revenue streams far exceed costs²⁹ has no basis in reality and, in fact, the evidence shows that the exact opposite is true. To put this in context, Peoples receives approximately \$1.8 million per month and CCI receives approximately \$.9 million per month in dial around compensation. Without this revenue, Peoples, CCI and other PSPs will be forced once again to rely on the revenue generated from the dwindling base of 0+ calls and, possibly, from extra increases in the local coin rate once PSPs are free to set the rate in October, to make up for the shortfall caused by the lack of interim dial around compensation. This lack of interim compensation did not further the public interest when it incited some PSPs to charge unreasonable 0+ rates in the past, and it will be even more injurious and contrary to the public interest if the lack of dial around compensation exerts the same pressure on the deregulated local coin rate.

It is unconscionable for the IXC's to continue to complain that they are being treated unfairly by having to pay interim compensation considering the virtual free ride that they have had on the backs of PSPs in carrying access code and 800 subscriber calls for over six years.³⁰ As an initial matter, Sprint's assertion that Section 276 only required the Commission to promulgate final rules by November 8, 1996, rather than actually having a compensation plan in

²⁹ Sprint Comments at 3.

³⁰ See Cable & Wireless, Inc. Comments at 4.

place by then, albeit an interim plan, is simply a hollow reading of the statute.³¹ The Commission rightly recognized that (i) the then existing \$6.00 per payphone compensation amount did not provide PSPs with “fair” compensation as required by Section 276, and (ii) that to comply with Section 276, the Commission was obligated to prescribe fair compensation by November 8, 1996. In addition, the Commission had been instructed in March 1995 by the D.C. Circuit, as a result of the *FTPA* case,³² to consider prescribing compensation for 800 subscriber calls, which compensation was long overdue.

Moreover, Cable & Wireless and other carriers have already incorporated a surcharge into their rates for calls originated at payphones to recover the costs of interim payphone compensation.³³ Thus, the IXC's have already established mechanisms and have collected funds to recover the costs of interim dial around compensation.

The comments reveal suggestions as to how the Commission might remedy the perceived deficiencies in the interim compensation plan. In terms of the dial around default rate, as described above, the Commission is on firm ground to continue with a default rate of \$.35 or a higher rate, based on the increased costs of handling dial around calls. With regard to the question of who should pay dial compensation, CCI and Peoples support including the RBOCs and other large LECs as payors of interim compensation.³⁴ The appropriate allocation of the

³¹ Sprint Comments at 12.

³² *Florida Public Telecommunications Ass'n. v. FCC*, 54 F.3d 857 (D.C. Cir. 1995).

³³ See Attachment 3 for Cable & Wireless' revised tariff filing in Mississippi.

³⁴ RBOC Coalition Comments at 35.

obligation could be based on toll revenues, as supported by TRA, AT&T and the RBOC Coalition.³⁵ The Commission could also choose to utilize its authority under Section 401 and forbear from obligating IXC's and LEC's with toll revenues below \$100 million with payment obligations as suggested by TRA.³⁶

Alternatively, in its comments, Peoples submitted an updated typical Peoples' payphone call profile for the period February through July, 1997.³⁷ As part of the profile, Peoples tracked the number of access code calls made to each carrier. For example, calls placed to 10288 or 1-800-CALL-ATT are included in the calculation for AT&T; likewise calls placed to 1-800-COLLECT are included in the total for MCI. Although Peoples can track 800 subscriber calls, Peoples does not know which carrier is actually providing the 800 service (*i.e.*, it is impractical for Peoples to continue to update a database that allows Peoples to know which carrier provides the underlying service for 1-800-USA-RAIL, 1-800-FLOWERS or the countless other number of temporary 800 subscriber numbers). Nonetheless, Peoples and CCI believe that the access code volumes of each carrier identified in Table 1 may provide a reasonable basis on which to allocate interim compensation payment obligations. Moreover, the percentages for the largest four carriers are comparable to the allocation based on toll services revenues that the Commission has previously used.

³⁵ TRA Comments at 9, AT&T Comments at 20-22; RBOC Coalition Comments at 35.

³⁶ TRA Comments at 14-16.

³⁷ Peoples Comments at 6.

**Table 1: Access Code Call Profile
February - July, 1997
Per Payphone**

Carrier	Access Code Calls	Percent of Total	Percent of Big 4
AT&T	25	43%	56%
MCI	15	26%	33%
Sprint	4	7%	9%
LDDS	1	2%	2%
Other	5	9%	0%
Debit Cards	8	14%	0%
Total	58	100%	100%

If the D.C. Circuit were to clarify that its decision in *IPTA* actually vacated the Commission's interim compensation plan during the remand period, the equities would require the Commission to ensure that its new plan provides fair compensation to PSPs, on a retroactive basis, to the point from which the Court vacated the interim compensation plan. As previously stated, the IXC's have already established mechanisms to recover the costs of dial around compensation from their end users. It would be counter to the public interest for the IXC's to retain these windfall revenues, which were increased to recover dial around compensation costs, while paying little or nothing to PSPs for the use of their equipment to generate substantial dial around call revenue.

Moreover, if the interim compensation plan is vacated and the Commission's previous plan (\$6.00 per payphone per month), is reactivated, the Commission should maintain

the \$.40 rate component of the earlier structure updated by the appropriate and unchallenged per call volume of 131 calls, for a per month amount of \$52.40 per month. The Commission could even use the increased call volumes that PSPs have experienced in the last several months as the basis for interim compensation. For example, CCI stated in its comments that it currently originates 157 dial around calls per month.³⁸

This is the same conceptual approach MCI recommended: “Interim compensation could be set at an amount equal to the estimated number of calls from payphones (131) times the new per-call compensation amount.”³⁹ No party challenged, and the D.C. Circuit did not disturb, the Commission’s finding that each payphone, on average, originates 131 dial around call per month. And, as described above, the equities demand that the interim plan be retroactive to the date the Commission’s current interim plan is vacated, if at all.

³⁸ CCI Comments at 20.

³⁹ MCI Comments at 7.

V. CONCLUSION

For the foregoing reasons, the Commission should affirm its dial around default compensation amount of \$.35 per call and continue to assure receipt by PSPs of the \$45.85 per month in interim compensation.

Respectively submitted,
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September 9, 1997

PROJECT NO. 14569

PROPOSAL FOR AMENDMENTS TO
§ 23.54 OF THE PUBLIC UTILITY
COMMISSION'S SUBSTANTIVE RULES
RELATING TO PRIVATE PAY
TELEPHONE SERVICE.

§
§
§
§
§
§

PUBLIC UTILITY COMMISSION
OF TEXAS

**SOUTHWESTERN BELL TELEPHONE COMPANY'S
COMMENTS ON PROPOSED AMENDMENTS TO
SUBSTANTIVE RULE § 23.54 (PAY TELEPHONES)**

COMES NOW, Southwestern Bell Telephone Company (Southwestern Bell)
and files this its Comments on the Proposed Amendments to Substantive Rule § 23.54
and would respectfully state as follows:

I.
Twenty-five Cent (\$.25) Maximum Rate

This proceeding arises in part because of the following language contained
in the Public Utility Regulatory Act of 1995 ("PURA-95"):

(c) The commission shall establish
a limit on the charge that may be
imposed for a pay telephone coin
sent-paid call within the local
exchange company's toll-free calling
area.

The Legislature also recognized that pay telephone services were
competitive as it placed "services from public pay phones" in Basket III for electing
incumbent local exchange companies (§3.356). In an earlier version of HB 2128, the
House of Representatives permitted pay telephone providers to charge an additional
twenty-five cents (\$.25) for calls lasting longer than 5 minutes. House Version of
HB 2128.

It is reasonable to conclude that the Legislature intended to recognize the competitive nature of this business but felt that consumers might need some protection against "overcharging" in certain situations and that the Commission's special expertise should be brought to bear on this subject. The Legislature was NOT saying that the Commission should establish the ceiling at the existing twenty-five cent (\$.25) rate without hearing any evidence or taking into account the nature of the pay telephone business. If the Legislature was satisfied that twenty-five cents (\$.25) was the appropriate rate, it was far more efficient to set the rate itself. As it did not do so, surely it intended for the Commission to analyze the applicable circumstances and arrive at a decision based on those circumstances.

Southwestern Bell submits there are at least three considerations the Commission should consider when it establishes a local pay telephone rate:

- (1) The effect on pay telephone availability of various rates.
- (2) Costs
- (3) Is there a safety net necessary?

The proposed rule essentially ignores the relationship of the twenty-five cent (\$.25) rate to pay telephone availability. The Commission should not make the same mistake. Pay telephones provide an essential public service, one that the Commission should encourage, rather than discourage. These telephones are often the only telephone service available to some consumers and, moreover, pay telephone service is a cost effective means for mobile customers to stay in touch with their businesses and families. It is axiomatic that more pay telephones will be installed (or retained) at higher rates than lower ones. Thus, in establishing a rate, the Commission should not simply establish a low rate. Instead it must take into account the need to

encourage pay telephone installation, while at the same time insure affordability. The proposed rule fails to reflect the balanced approach intended the Legislature in passing PURA 95.

As demonstrated below, the costs of providing local pay telephone service are not recovered at the existing twenty-five cent (\$.25) rate. In a rate of return environment where utilities are permitted to earn a reasonable return overall, perhaps a subsidized rate is justifiable. In a new environment where incentive regulation and competition is the goal, subsidy can no longer be the Commission's only consideration. No government agency can simply take property without adequate compensation. If the Commission wants to retain pay telephones at the current level, it must be willing to allow providers an opportunity to recover their costs. It is particularly unfair for the commission to violate the Fifth Amendment to the Constitution without recognizing due process to investigate and analyze the costs of the pay telephone business.

The Commission may also consider, in addition to the considerations above, whether a safety net is necessary for this competitive business. Southwestern Bell argues below that this safety net be set no lower than fifty cents (\$.50) per call. That rate will adequately compensate pay telephone providers while at the same time insuring that no one will, for example, be charged \$2.00 or more for a local call. While §3.2625 does not clothe the Commission with the power to mandate different rates for different portions of a pay telephone provider's service area, the Commission could explore pay telephone providers' voluntary agreement to limit increases in public housing complexes or other favored locations. This would insure a favored rate for the needy instead of a subsidized rate for all, as the present system requires.